



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 10, 1995

Mr. B.J. Smith
City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR95-1208

Dear Mr. Smith:

You previously asked whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. You assert that the requested information is excepted from required public disclosure under sections 552.101 and 552.108 of the Government Code. Your request was assigned ID# 33547.¹

The Open Records Act imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. See Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. See, e.g., Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).


¹Although you have indicated in a telephone conversation with one of our staff an intent to release to the requestor most of the records at issue and to withdraw your request for an open records decision, you have provided this office with no concrete evidence that any of the records at issue have been released. Further, the requestor has informed this office that as of the date of this letter, the city has not released any of the records at issue to him. Finally, this office has provided you several opportunities to explain why your request for an open records decision is no longer necessary but you have failed to do so. Accordingly, this office deems your original request as active.

We realize that the short time frame prescribed by section 552.301 may occasionally impose a substantial burden on governmental bodies seeking to comply with the act. Accordingly, when we receive an otherwise timely request for an open records decision that lacks some information necessary for us to make a determination, it has been our policy to give the governmental body an opportunity to complete the request. On May 12, 1995, we asked you for copies of the records at issue. To date we have not received the requested copies.

The Open Records Act places on the custodian of public records the burden of establishing that records are excepted from public disclosure. Attorney General Opinion H-436 (1974). Your request for an open records decision remains incomplete. Without the information requested from you, this office is unable to evaluate the exceptions you raised. Consequently, we find that you have not met your burden under sections 552.301 through 552.303 of the Government Code and that the information is presumed to be public. Open Records Decision No. 195 (1978).

In the absence of a demonstration that the information is confidential by law or that other compelling reasons exist as to why the information should not be made public, you must release the information. Open Records Decision No. 195 (1978). *See also* Gov't Code § 552.352 (the distribution of confidential information is a criminal offense). If you have any questions regarding this matter, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/RWP/rho

Ref.: ID# 33547

cc: Mr. Robert H. Osburn
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